

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE BUCHWALD

15 CV

9533

IN RE:

LETTER ROGATORY dated November 20, 2015 issued by JUDGE MARÍA GABRIELA FERNÁNDEZ ZURITA, of the Civil Trial Court of the City of Buenos Aires, Argentina, to Obtain Evidence in this District.

Civil Action No.:

VERIFIED COMPLAINT IN THE NATURE OF AN APPLICATION UNDER 28 U.S.C. § 1782 TO OBTAIN EVIDENCE IN THIS DISTRICT

Applicant, SILVIA L. BOLATTI, ESQ., a principal of the law firm Bolatti & Associates,

70 Little West St., Suite 7 A, New York, New York 10004, states as follows:

Nature of Action

1. This is an application pursuant 28 U.S.C. § 1782 for an order, (i) to obtain evidence in this district in response to a letter rogatory issued on November 20, 2015 by Judge María Gabriela Fernández Zurita (the “Letter Rogatory”) of the Civil Trial Court of the City of Buenos Aires, Argentina (the “Argentine Court”); and (ii) to appoint Applicant, in her capacity authorized under the Letter Rogatory, as Commissioner to administer any necessary oath and take the requested evidence.

2. A copy of a certified English language translation of the Letter Rogatory followed by the original Spanish text is annexed hereto as Attachment 1.

Jurisdiction

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1782 because this is an application by an interested person for an order to obtain evidence in this district in response to a letter rogatory issued by a foreign tribunal.

Venue

4. Venue is proper under 28 U.S.C. § 1782 because the person from whom the foreign tribunal seeks evidence, J.P. Morgan Chase Bank, resides in this district with offices at 270 Park Avenue, 46th Floor, New York, NY 10017.

Background

5. This matter arises from a contested Probate proceeding pending before the Argentine Court involving decedent Jorge Eduardo Acevedo's heirs (the "Underlying Argentine Action"). Acevedo died in Argentina on December 28, 2007 leaving one or more bank accounts, investments and, or trusts at J.P. Morgan Chase Bank, 270 Park Avenue, 46th Floor, New York, NY 10017 ("J.P. Morgan").

6. The Argentine Court has subject-matter jurisdiction in the Underlying Action, including the power to grant discovery orders. On or about November 20, 2015 Judge Fernández Zurita issued an order and request for judicial assistance to a court of competent jurisdiction in New York seeking to obtain evidence regarding bank accounts, investments and, or trusts maintained by Jorge Eduardo Acevedo at J.P. Morgan, which resides in this district with offices at 270 Park Avenue, 46th Floor, New York, NY 10017. *See Attachment 1 (Letter Rogatory), p. 1.* Judge Fernández Zurita issued the Letter Rogatory based on a decision and order (the "Order"), the substance of which is transcribed in the Argentine Court's Letter Rogatory.

7. In the Letter Rogatory, Judge Fernández Zurita asks this Court to obtain documentary evidence and deposition testimony regarding bank accounts, funds, deposits, transactions, trusts or other assets maintained by decedent Jorge Eduardo Acevedo, held by third

parties jointly with Acevedo, or held for Acevedo's benefit, at J.P. Morgan Bank or any of its branches or affiliates (the "Assets"), as well as information regarding all deposits, transfers, withdrawals, investments or other transactions from such accounts as of the date of his death, December 28, 2007, to date. *See* Attachment 1 (Letter Rogatory), at ps. 1-2.

8. The Letter Rogatory also authorizes applicant to conduct all procedural acts necessary for the execution of the Letter Rogatory. In that capacity, applicant has commenced this action and seeks appointment under 28 U.S.C. § 1782 as the person authorized to administer any necessary oath and to take the requested evidence.

**Application for Relief
(28 U.S.C. § 1782)**

9. Applicant repeats the allegations set forth in paragraphs 1 through 8.

10. Federal district courts are authorized under 28 U.S.C. § 1782 ("Section 1782") to assist foreign and international tribunals as well as litigants before such tribunals to obtain evidence requested by the foreign tribunal or upon application of any interested person:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. . . . The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement.

See 28 U.S.C. § 1782.

11. The evidence requested under Section 1782 shall be taken in accordance with the Federal Rules of Civil Procedure unless the district court prescribes another practice and procedure for taking the evidence. *Id.*

12. The Second Circuit Court of Appeals has held that three requirements are necessary in order to invoke a district court's authority under Section 1782:

- (i) the person from whom the discovery is sought must reside or be found in the district of the district court to which the application is made;
- (ii) the discovery must be for the use in a proceeding in a foreign or international tribunal; and
- (iii) the application must be made by a foreign or international tribunal or by any interested person.

See In Re Application of Gianoli Aldunite, 3 F.3d 54, 58-59 (2d Cir.), *cert. denied sub. nom.*, *Fonden v. Aldunite*, 510 U.S. 965 (1993).

13. As set forth, *infra*, at ¶¶ 4-7 and in the Letter Rogatory annexed hereto as Attachment 1, each of these three requirements have been satisfied in this case.

WHEREFORE, the Court should grant this application under 28 U.S.C. § 1782 by issuing an order:

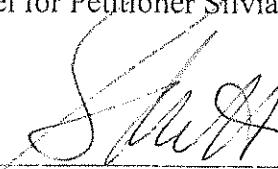
- (i) Appointing applicant, Silvia L. Bolatti of the firm Bolatti & Associates, as the person authorized to take the evidence requested by Judge Fernández Zurita in the Letter Rogatory; and
- (ii) Authorizing Ms. Bolatti to obtain the evidence from J.P. Morgan Chase Bank of New York as requested in the Letter Rogatory in accordance with the Federal Rules of Civil Procedure; and

(iii) Awarding such other relief as this Court deems appropriate or just.

Dated: New York, New York
December 7, 2015

Respectfully submitted,

SILVIA BOLATTI ESQ.
Counsel for Petitioner Silvia L. Bolatti

By: 

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VERIFICATION

SILVIA L. BOLATTI, an attorney duly admitted to the practice of law before this Court, declares pursuant to 28 U.S.C. § 1746 as follows:

1. I have read the foregoing Complaint in the Nature of an Application under 28 U.S.C. § 1782 to Obtain Evidence in this District (the “Complaint”), including the Letter Rogatory issued on November 20, 2015 by Judge María Gabriela Fernández Zurita of the Civil Trial Court of the City of Buenos Aires, Argentina (the “Argentine Court”), which is annexed as Attachment 1 to the Complaint.

2. The information set forth in the Complaint is true based on my review of the Letter Rogatory and my communications with counsel for Ms. María Marta Acevedo, one of the parties in the underlying proceedings pending before Judge Fernández Zurita in the Argentine Court.

3. The document annexed as Attachment 1 to the Complaint is a true copy of the Letter Rogatory that I received from Ms. Acevedo’s counsel in the underlying Argentine Proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
December 7, 2015



SILVIA L. BOLATTI (SB-7786)

ATTACHMENT 1